IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 892 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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SALAM ABDUL HANIFSHAIBHAI THRO' WIFE HAJRABIBI SALAM - Petitioner(s)

Versus

THE DISTRICT MAGISTRATE & 2 - Respondent(s)

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Appearance :
MR ANIL S DAVE with MS KRUTI M SHAH for Petitioner : 1,
MR DIPEN DESAI ASSTT GOVERNMENT PLEADER for Respondents(s) : 1-3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/08/2007

C.A.V JUDGMENT :

1. The petitioner-detenu has, through his wife, invoked Articles 21, 22 and 226 of the Constitution with a prayer to set aside the order

dated 20.12.2006 by which he was ordered to be detained under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "PASA"). According to the grounds of detention furnished to the petitioner, he is alleged to have indulged in bootlegging and five cases of offences punishable under the Prohibition Act have been registered against him. Out of those five cases, he is stated to have been arrested and released on bail in three cases while he was wanted in two cases. In the first case registered at Kamrej Police Station vide III-C.R. No.261 of 2006, he is alleged to be the owner of 780 bottles of liquor of different brands which were caught while being transported on 26.6.2006. When the petitioner was arrested on 8.10.2006 pursuant to that case, he is stated to have admitted his guilt in his statement before police. In two other cases registered at Palsana Police Station vide III-C.R. Nos.889 and 890 of 2006, he was caught in connection with transportation of 4210 and 1254 bottles of liquor. In another case registered with Palsana Police Station vide III-C.R. No.1057 of 2006, 6388 bottles of liquor which were to be supplied to the petitioner were caught and he is stated to have escaped while he was piloting the vehicle carrying that stock of liquor. In the fifth case

registered as III-C.R. No.740 of 2006 in Kamrej Police Station, he is stated to have escaped from the premises raided by the police where 191 boxes containing 6792 bottles of "Indian made foreign liquor" ("IMFL" for short) were stored. On the basis of those facts, the petitioner was found to be a "bootlegger" within the meaning and definition of section 2 (b) of PASA and, as stated in the impugned order, activities of the petitioner were likely to adversely affect living conditions and health of the people. Therefore, impugned order to prevent him from acting in a manner prejudicial to maintenance of public order was stated to have been made.

2. The petitioner has challenged the impugned order mainly on the grounds that his alleged activities were required to be dealt with under ordinary law as they did not and could not affect public order. Although he was alleged to be absconding in connection with two criminal cases, no notification or order under the Code of Criminal Procedure, 1973 was issued in that regard and the State had not applied for cancellation of his bail. It is averred that the sponsoring authority has not recorded any statement of any witness which could establish that the activities of the detenu were

prejudicial to maintenance of public order. It is submitted that the petitioner could not be termed as "bootlegger" or "habitual offender" and that there was unexplained delay in making of the impugned order. It was pointed out by learned counsel Mr.A.S.Dave, appearing for the petitioner with Ms.K.M.Shah, that the detenu was released on bail despite the successive cases of alleged offences and there was no material before the sponsoring authority to infer that the detenu was absconding at the relevant time. Out of the five cases mentioned in the grounds of detention, first three cases were registered before September 2006 and could not form the basis for the order made in December 2006, according to the submission. It was further submitted that the authorities could have resorted to simple and expeditious remedy of cancellation of bail granted to the petitioner. Learned counsel also submitted that there was no material to suggest consumption of liquor by anyone or any harm or injury or likelihood of any harm to health of anyone. The so-called IMFL was not shown to be harmful to public health or to be posing a grave danger to public health, according to the submission.

3. Relying upon affidavit of the detaining authority, it was submitted on behalf of the respondent that the proposal and materials received from the sponsoring authority for detention of the petitioner were carefully scrutinized, examined and considered and were found to be sufficient for detaining the petitioner. The grounds of detention were true, correct, clear and proper. After carefully examining the papers pertaining to the five cases registered against the petitioner and after applying mind to the facts of the case, the detaining authority had come to the conclusion that the petitioner was in illegal liquor business and was disturbing public order, public peace and public health and was likely to continue his anti-social and bootlegging activities which may cause grave or widespread danger to life, property and public health. Therefore, after arriving at subjective satisfaction to the effect that anti-social and bootlegging activities of the petitioner could not be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, the impugned order was passed with a view to immediately prevent the petitioner from continuing such illegal, anti-social and

bootlegging activities. The impugned order is stated to have been passed after full application of mind and in compliance with the provisions of PASA as well as the Constitution of India. It is stated that all relevant material and vital documents which had a bearing and which were available were placed before the authority and copies of all such documents which were considered and relied upon for passing the order of detention were supplied to the petitioner along with the grounds of detention.

3.1 As for the petitioner not being declared to be an absconding accused person in connection with III-C.R. No.1057 of 2006 and III-C.R.No.740 of 2006, it is stated on behalf of the respondent that, in spite of best efforts on the part of the police, the petitioner could not be arrested and action was already taken to declare him an absconder. It is submitted that there was sufficient cogent and credible material on record which clearly indicated indulgence of the petitioner in anti-social activities having the potential of affecting public health and disturbing public order. It is also stated that, after registration of the offence on 8.12.2006 against the petitioner and as he was absconding, the sponsoring authority had collected necessary

material and information with regard to his anti-social activities and submitted a proposal dated 19.12.2006 and, after considering the material, facts and circumstances of the case as well as applicable legal provisions, the detaining authority was subjectively satisfied that the petitioner was a bootlegger and his anti-social activities had the potential of disturbing public order. Therefore, in short, the impugned order dated 20.12.2006 was neither delayed nor without application of mind.

3.2 Learned A.G.P. contended that the activity of bootlegging was *per se* posing danger to public health insofar as the dealing in liquor or any alcoholic drink was prohibited in the State by legislation, namely, the Prohibition Act, 1949, and any supply of alcohol in violation of that law could only result into clandestine consumption thereof which, in turn, was injurious to health and likely to cause widespread danger to public health and public order when dealt in large quantities.

4. Judgment of the Supreme Court in ***Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City [AIR 1989 SC 491]*** was heavily relied upon for the petitioner for the

observations therein that the petitioner may be a bootlegger within the meaning of section 2 (b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of section 3 of the Act, his activities of bootlegging affect adversely or are likely to affect adversely the maintenance of public order. It is held:

> "*12. Under sub-section (1) of section 3, an order of detention of a person can be passed with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Sub-section (4) of section 3 contains a deeming provision. Under sub-section (4), a bootlegger or a dangerous person or a drug offender shall be deemed to be acting in a manner prejudicial to the maintenance of public order when the activities of such a person affect adversely or are likely to affect adversely the maintenance of public order. In other words, although sub-section (4) contains a deeming provision, such deeming provision will not be attracted unless the activities of the person concerned affect adversely or are likely to affect adversely the maintenance of public order.*"

4.1 Learned counsel for the petitioner relied upon several judgments of this court which referred and relied upon the above observations of the Supreme Court and submitted that, even in more serious cases of offences under the Prohibition Act, detenus were ordered to be

released by this court.

4.2 In view of reliance placed for the respondent upon subsequent judgment in Kanuji S. Zala (infra), learned counsel for the petitioner relied upon the later Division Bench judgment of this court in ***Ashok Balabhai Makwana v. State of Gujarat*** in ***LPA No.223 of 2000*** decided on 22.8.2000 wherein the court observed:

> *"5. ....It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority had mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgment can be read in isolation and bereft of the context. The judgment is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgment are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, to find out as to whether it is a case of breach of public order or breach of public health is concerned, (sic) credible material has to be there. In the case of K.S. Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the*

petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors....."

4.3 Judgment of this court in ***Chotumal Sugansingh Rajput v. State of Gujarat [1986 (1) GLR 688]*** was relied upon for the observation quoted hereunder:

"4. ....There is, therefore, a two-fold requirement:

(1) The concerned person must be engaged in or making preparation for engaging in any activities, whether as a bootlegger or some such person mentioned in sub-section (4), and

(2) The activities of the concerned person must be such as affect adversely or one likely to affect adversely the maintenance of public order.

The Explanation to sub-section (4) for the purpose of the said sub-section clearly provides that public order shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in sub-section (4) directly or indirectly is causing or is likely to cause any harm, danger, alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. The satisfaction referred to above is, of course, subjective satisfaction. If subjective satisfaction is found to have been based on material which satisfies the

aforesaid two requirements then, in view of the said explanation, the concerned nefarious activities of the proposed detenu will be deemed to have adversely affected the public order."

4.4 Referring to earlier Division Bench decision of this court dated 5.12.1984 in Special Criminal Application No.399 of 1984 arising out of a reference concerning provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the following observations were quoted:

"*.....We have also indicated that there are two different satisfactions contemplated in the Act and any one of them would sustain the declaration. It may be that the materials before the authority to be so satisfied were such as to justify one satisfaction, namely, that the detenu "smuggles"or it may be that they were such as to justify the other satisfaction, namely that he "is likely to smuggle". The Likelihood of a prejudicial activity, such as smuggling, in the future is to be predicated upon an assessment of the nature of the past conduct. If the past conduct is such as would not lead to an assumption that the person who is responsible for such past prejudicial activity is likely to indulge in such conduct in the future, past conduct by itself may not be relevant. A man who commits a crime, for instance, need not repeat the same crime. He might have committed the crime for various reasons, such as emotional imbalance of the moment, and there would be no justification in all cases, without anything more, to assess that*

he is likely to commit such crime again. There are other crimes which person may indulge in, not because of any momentary emotional imbalance or such other reasons, but because of greed, because of the desires to become quick rich. Operations such as smuggling, hoarding, blackmarketing, illicit dealing in foreign exchange and other activities of a similar character are generally undertaken for economic advantage, in that process exploiting the economic order of the country. Carried on in a reasonably noticeable scale any person could be assumed to do it for undue economic advantage in the matter of satisfaction as to likelihood of persisting in such activity in future."

4.5 Learned advocate Mr.Dave vehemently argued that the presumption of likelihood of danger to public health could not easily arise even in absence of any opinion of expert, report of any laboratory or statements of some witnesses to indicate that the alleged activity of bootlegging was likely to cause danger to health of a large section of people in an area. Relying upon recent judgment of the Supreme Court in ***District Collector, v. V.Laxmanna [AIR 2005 SC 2802]***, it was pointed out that, in the facts of that case, sale of arrack was prohibited in the State of Andhra Pradesh and it was argued that it was sufficient if detaining authority were satisfied that detenu was indulging in manufacture, transport or sale of arrack and there was no need for him to come to the

conclusion that such arrack was dangerous to public health. Rejecting that argument, the Supreme Court held that, if the detention was on the ground that the detenu was indulging in manufacture or transport or sale of arrack, then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but, if the arrack sold by the detenu was dangerous to public health, then under the Act, it became an activity prejudicial to the maintenance of public order. Then it became necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu was an arrack which was dangerous to public health to attract the provisions of the Act. Therefore, while holding that dealing with arrack which was dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act, it was also held that it was obligatory for the detaining authority to provide the material on which it had based its conclusion on this point.

5. Learned A.G.P. Mr.Dipen Desai submitted that the activity of sale, storage or transportation of illicit liquor or IMFL, in

violation of the provisions of the Prohibition Act, was required to be deemed to be likely to adversely affect public health and no evidence or material was required to arrive at the subjective satisfaction about likelihood of public health being adversely affected by such activity of bootlegging. Relying upon Article 47 of the Constitution, he pointed out that it was one of the directive principles, fundamental in the governance of the country, to bring about prohibition of consumption, except for medicinal purpose, of intoxicating drinks and of drugs which are injuries to health. He relied upon Division Bench judgment of this Court in ***Popat Mohan Vaghari vs. State of Gujarat [1989 (1) GLH 551]*** for the following observations made therein:

> *"5. .....The activity of storing liquor on large scale and selling the same through liquor dens in public alone would be sufficient to adversely affect public order. One has to wink his eyes just for a while and imagine his own mother, wife, sister or daughter passing through public street where liquor is being sold in public and consumed openly. After imagining such a situation, question has to be put - Will there not be danger or alarm or feeling of insecurity among the general public or any section thereof on account of such activity? Law cannot be interpreted and implemented by shutting one's own eyes to the hard realities of life which exist beyond the air-conditioned chambers of bungalows and offices. If rule of law has to succeed, it has to run closer to the rule of life. It*

has got to be nearer to life and not away from life. In the localities inhabited by poor and downtrodden people, such activities of storing and selling liquor in public are normally being carried on. By sale of liquor in public in such localities, normal life of people will be disturbed.....But in view of aforesaid decisions of this High Court in the case of Rajendrakumar (supra) and particularly in view of the explanation to section 3 (4) of PASA, it is not permissible to take such a detached and disintegrated view of the matter. Explanation to section 3 (4) provides that public order shall be deemed to have been affected adversely inter alia if any of the activities of any person referred to in the sub-section directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health."

5.1 Another Division Bench of this Court has also held in ***Chandulal Jayswal v. Commissioner of Police [1990 (1) GLH 148]*** that:

"*28. It is, therefore, clear that if there is any activity of bootlegging which is prejudicial to the maintenance of public order within the enlarged meaning of sub-section (4) of section 3 of the Act, that would be a material on the basis of which subjective satisfaction can be arrived at.*"

5.2 Recent judgment of the Supreme Court in ***State of Maharashtra vs. Nagpur Distillers, Nagpur [AIR 2006 SC 1987]*** was relied upon for the

following observations:

> *"9. .....This factual distinction apart, we have to keep in mind that the right to trade in liquor is only a privilege farmed out by the State. Article 47 of the Constitution of India clearly casts a duty on the State at least to reduce the consumption of liquor in the State gradually leading to prohibition itself. It appears to be right to point out that the time has come for the States and the Union Government to seriously think of taking steps to achieve the goal set by Article 47 of the Constitution of India. It is a notorious fact, of which we can take judicial notice, that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume it but it has also become an obsession with very many. Surely, we do not need an indolent nation. Why the State in the face of Article 47 of the Constitution of India should encourage, that too practically unrestrictedly, the trade in liquor is something that it is difficult to appreciate. The only excuse for the State for not following the mandate of Article 47 of the Constitution of India is that huge revenue is generated by this trade and such revenue is being used for meeting the financial needs of the State. What is more relevant here is to notice that the monopoly in the trade is with the State and it is only a privilege that a licensee has in the matter of manufacturing and vending liquor."*
>
> *(underline added)*

5.3 And, in ***Ashok Lanka v. Rishi Dikshit and Others [(2006) 9 SCC 90]***, it is observed under the caption, **Regulation of liquor vis-a-vis**

public health:

> *"30. In common parlance, public health tends to refer only to aspects of medical care and prevention of disease. However, a true interpretation of the term "public health" will include not only this traditional notion but several other aspects that promote healthy living."*
>
> *"31. ...."*
>
> *"32. The relationships among medicine, public health, ethics and human rights are now evolving rapidly, in response to a series of events, experiences and struggles. In general people equate medical care with health, but the vast majority of research into the health of populations identifies so-called "societal factors" as the major determinants of health status. Public health, although starting as a social movement, has at least in recent years, responded relatively little to this profound knowledge about the dominant impact of society on health, such as behaviour like excess alcohol....."*
>
> *"36. Prohibition of liquor was, thus, inserted as part of public health....."*
>
> *(underline added)*

5.4 Judgment of the Supreme Court in ***Kanuji Zala v. State of Gujarat [1999 (2) GLH 415]*** was relied upon for the proposition that:

> *"5. What is required to be considered in such cases is whether there was credible material before the Detaining Authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the courts to decide by*

applying an objective test as it is a matter of subjective satisfaction of the Detaining Authority."

In the facts of that case, the Detaining Authority had specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself was held to be sufficient to amount to affecting adversely the public order as defined by the Act.

5.5 The Full Bench of this court constituted upon a reference of several issues to a larger bench has, in ***Koli Bharatbhai Ukabhai Vegad v. District Magistrate [2001 (2) GLH 335],*** culled out the following broad principles regarding subjective satisfaction for passing order of detention:

"*39. By catena of judicial pronouncements, following aspects have emerged, unquestionably, which are required to be kept live on the mental radar before reaching to the subjective satisfaction for passing the order for detention.*

(i) Only relevant and vital material is required to be taken into consideration for subjective satisfaction of the detaining authority.

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision making function is entrusted to the subjective satisfaction of the statutory functionary, there is an

implicit incumbency to apply his mind to the pertinent and proximate matters only eschewing the irrelevant and remote aspects.

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which cannot be questioned by the Court. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated.

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision making process for reaching the subjective satisfaction on objective facts, is in any way influenced, coloured or affected by any caprice, malice or irrelevant considerations or non-application of mind.

(v) Subjective satisfaction cannot be re-examined or reviewed by the Court on the ground that ordinarily general criminal law can be invoked instead of special enactment.

(vi) At the time of making a detention order, the authority should arrive at proper satisfaction and such satisfaction should be reflected, clearly, and in categorical terms in the order of detention.

(vii) The satisfaction cannot be inferred by very making of the order which says that "it was necessary to prevent the detenu from acting in a manner prejudicial" falling within the mischief

of section 3(1) of the Act.

(viii) The detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention by an expression of satisfaction.

(ix) Justification for such an order should exist in the very ground furnished to the detenu to reinforce the detention order. Ordinarily, it cannot be explained subsequently by substituting further reasons. It is, therefore, clear that the decision of the authority must be natural culmination of the application of mind to the relevant and material facts.

(x) The subjective satisfaction is based on mental process and it must be followed by the authority in taking action for passing the detention order.

(i) First, in such a process, in the first stage is to examine the material adduced against the prospective detenu to show either from his conduct or his antecedent history that he has been acting in a prejudicial manner.

(ii) Second, if the aforesaid material appears, satisfactorily, to the authority concerned, then the detaining authority has to further consider whether it is likely that the said person would act in prejudicial manner in the near future,if he is not prevented from doing so by passing an order of detention.

For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. In absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority."

6. The relevant statutory provisions of PASA read as under:

"The Gujarat Prevention of Anti-Social Activities Act, 1985.

(Gujarat Act No.16 of 1985)

An Act to provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order.

***S.2(b)"bootlegger"** means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 (Bom.XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animals, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things*

described above by or through any other person, or who abets in any other manner the doing of any such thing.

Sec.3 Power to make orders detaining <u>certain persons</u>:

(1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, has a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

> *(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.*
>
> *Explanation:- For the purpose of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health."*

7. Necessary dissection and analysis of the statutory provisions would show that a person could be directed to be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. A person has to be deemed to be "*acting in any manner prejudicial to the maintenance of public order*", if such person is engaged in or is making preparation for engaging in any activities, as a bootlegger, dangerous person, drug offender, immoral traffic offender or property grabber, which adversely affect or is likely to adversely affect the maintenance of public order. Thus, the

first essential condition of "*prejudicial to the maintenance of public order*" is given an expanded meaning to include "*likely to affect adversely the maintenance of public order*" with a rider that the person must either be engaged in or making preparation for engaging in any activity adversely affecting the maintenance of public order. For application of the section, such person has to be falling in the category of "*bootlegger, dangerous person, drug offender, immoral traffic offender or property grabber*". While expanding the ambit of the power to detain and restricting the categories of persons who could be detained, by explanation to sub-section (4), the meaning of '*public order being adversely affected*' or '*being likely to be so affected*' is further expanded by a mandatory deeming fiction. If any of the activities of any person falling in the aforesaid category, directly or indirectly, causes or is likely to cause any harm, danger or alarm, or feeling of insecurity among general public or any section thereof, he has to be deemed to be likely to adversely affect public order. Similarly, if any of the activities of such person is causing or likely to cause a grave or widespread danger to life, property or public health, it has to be deemed to be adversely affecting public order.

7.1 Therefore, any activity or mere likelihood of any activity, of any bootlegger, dangerous person, drug offender, immoral traffic offender or property grabber, which is causing or likely to cause grave or widespread danger to life, property or public health, has to be deemed to be adversely affecting public order. Consequently, while examining a challenge to the order of preventive detention, the court has to verify whether the person concerned was falling in any of the aforesaid categories of persons as defined in PASA, and then whether any of his activities, preparation for any activities or likelihood of any activities was causing or likely to cause any harm, danger, alarm or feeling of insecurity in the general public or any section thereof, or grave or widespread danger to life, property or public health. Conversely, the likelihood of grave or widespread danger to life, property or public health, due to activities or likely activities of such person has to be deemed to be likely to adversely affect public order for the maintenance of which he could legally be directed to be detained.

7.2 It is clear and well established that the necessity of preventing such person from

acting in any manner prejudicial to the maintenance of public order is a matter of subjective satisfaction of the Detaining Authority which cannot be questioned, re-examined or reviewed by the court. The likelihood of prejudicial activity in future has to be predicated upon an assessment of the nature of past conduct. A man who commits a crime cannot be presumed to have the tendency to repeat the same. Crimes are committed for various reasons, such as momentary emotional imbalance, necessity, recklessness or out of various motives. Crimes are also committed not because of any momentary emotional imbalance or personal vendetta, but because of greed or nefarious designs of making easy money. Operations, such as smuggling, hoarding, trafficking in human being, grabbing of properties, dealing in illicit foreign exchange or liquor are undertaken for economic advantage and to exploit the economic or social order. When such activity is carried on in a reasonably noticeable scale, the person concerned could be assumed to be doing it in a systematic manner for undue economic advantage and it could sustain the assumption of likelihood of his persisting in such activity in future, posing grave or widespread danger to life, property or public health.

Stray incidents of anti-social activities on a very small scale, however, may not in all cases sustain such assumption of danger to life, property or public health, particularly in view of the adjectives "*grave or widespread*" as used in the explanation to qualify danger.

8. Particularly in the case of a "*bootlegger*" as defined in PASA, the subjective satisfaction about likelihood of danger to public health could be based on the assumption inherent in the provisions of the Prohibition Act and the Directive Principle of State Policy as enshrined in Article 47 of the Constitution. As held by the Apex Court in ***State of Maharashtra v. Nagpur Distilleries*** (supra), it is a notorious fact, of which judicial notice could be taken, that more and more of the younger generation in this country is getting addicted to liquor; and as observed in ***Ashok Lanka v. Rishi Dikshit*** (supra), prohibition of liquor was, thus, inserted as part of public health.

9. It has to be borne in mind while considering challenge to an order of preventive detention, that the purpose and justification of

such order is prevention of an activity which is likely to be prejudicial to the maintenance of public order. The material in respect of past conduct and activities of the person is relevant for the purpose of ascertaining whether he is falling in a particular category such as "*bootlegger*" and may by itself sustain and justify the order of detention and may as well or only provide the basis for assuming the likelihood of his continuing the activity which may adversely affect the maintenance of public order. Therefore, when there is sufficient material to sustain the finding that a person is a "*bootlegger*" within the meaning and definition of section 2 (b) of PASA and the material on record also sustains the assumption of likelihood of his activity causing grave or widespread danger to public health, public order has to be deemed to be likely to be adversely affected. And, where public order is likely to be adversely affected by the activities of the person who is a bootlegger, he has to be deemed to be acting in a manner prejudicial to the maintenance of public order. If the detaining authority were subjectively satisfied about the necessity of preventing such person from acting in that manner which is or which is likely to be or which has to be deemed to be prejudicial to

the maintenance of public order, an order of his detention could be made and has to be upheld.

10. Applying the above statutory provisions, precedents and propositions of law to the facts of the present case, obviously, the petitioner was falling in the category of "*bootlegger*" and the cases registered against him consistently involved storage or transportation of liquors in large quantities. Having regard to the material indicating systematic activity on a noticeable scale, the subjective satisfaction recorded by the detaining authority to the effect that the activities of the petitioner were likely to cause widespread danger to public health and that it was necessary to prevent him from acting in any manner prejudicial to the maintenance of public order could not be said to be without any basis or application of mind or based on material which was not relevant or cogent. As held by the Supreme Court in ***Kanuji Zala*** (supra), the statement in the grounds for detention that the activity of the detenu was likely to cause harm to public health was by itself sufficient to amount to affecting adversely the public order, as defined in the Act. It is also held in ***Commissioner of Police v. Smt. C. Anita [(2004)7 SCC 467]***, that court cannot substitute its own

opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. In the facts of the present case, there is no vagueness or staleness. The incidents relied upon by the detaining authority clearly substantiate the subjective satisfaction arrived at by the detaining authority as to how the activities of the detenu were prejudicial to the maintenance of public order.

11. It has been earlier held by the Supreme Court in ***Razakbhai Issakbhai Mansuri v. State of Gujarat [1993 (1) GLH 1169]*** that so far as intoxicating liquors are concerned, their evil effects are well established specially for the Indian society. That is why the framers of the Constitution considered it fit to include it, in express terms, in Article 47 while indicating the duty of the State to raise the standard of living and to improve the public health. In order that the policy of prohibition may succeed, it is not sufficient to merely ban manufacture and consumption of alcoholic drinks and to render it really effective, further measures became necessary in order to defeat the illegal activities of the anti-social elements engaged in illicit manufacture and illegal distribution of

liquor in the market. It, therefore, became obligatory for the State to take all such steps as found necessary for implementing the prohibition policy by not only placing restrictions on the manufacture, sale and consumption of liquors but also by adopting other regulatory measures.

11.1 Referring to the '*liquor laws*' and '*liquor control*', a learned British author in *The Encyclopaedia Britannica, 14th Edition, Volume 14, page 191* says:

> *"The dominant motive everywhere, however, has been a social one, to combat a menace to public order and the increasing evils of alcoholism in the interests of health and social welfare. The evils vary greatly from one country to another according to differences in climate, diet, economic conditions and even within the same country according to differences in habits, social, customs and standards of public morality. A new factor of growing importance since the middle of the 19th century has been the rapid urbanisation, industrialisation and mechanisation of our modern everyday life in the leading nations of the world, and the consequent wider recognition of the advantages of sobriety in safeguarding public order and physical efficiency."*

11.2 It was earlier observed by the Supreme Court in ***Nashirwar v. State of Madhya Pradesh***

[AIR 1975 SC 360] that trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible in other trades are lawful and reasonable so far as the trade in liquor is concerned. That is why even prohibition of trade in liquor is not only permissible but is also reasonable. The reasons are public morality, public interest and harmful and dangerous character of the liquor.

12. Thus, there is sufficient legal dicta to sustain the assumption that likelihood of storage, distribution and consumption of liquor in violation of the Prohibition Act causes danger to public health and consequently public order. Therefore, there is no requirement of any additional material in the form of expert's opinion or statements of witnesses to assume that illegal supply of liquor in large quantities was likely to cause danger to public health and such activities of any person would be likely to cause widespread danger to public health and thereby adversely affect the maintenance of public order.

13. In the facts of the present case, the satisfaction about the petitioner being a "*bootlegger*" and his activities being prejudicial

to the maintenance of public order as well as about the likelihood of his activities causing widespread danger to public health, by the scale of his operations, were all substantiated by credible and cogent material. Whether he was absconding or not and whether any other remedies and recourse could have been more appropriate or not are irrelevant considerations from the legal point of view. Although any order of preventive detention impinges upon the personal liberty of a person and his fundamental right, the effect of a valid law made by the legislature in its wisdom with the avowed object of preventing anti-social activities by preventive detention, permissible under the Constitution subject to certain conditions, ought not to be diluted or defeated by adopting a hyper-technical approach or by ignoring its critically important provisions.

14. In the facts and for the reasons discussed hereinabove, the impugned order directing detention of the petitioner is found and held to be legal and, since no ground is made out to set it aside, the petition is dismissed and Rule is discharged with no order as to cost.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)